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Attorneys for MGM MIRAGE OPERATIONS, INC.

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

MGM MIRAGE OPERATIONS, INC., a  
Nevada corporation,

Plaintiff,

v.

SYLVAIN DORAIS, an individual,

Defendant.

CASE NO.

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

- (1) Cybersquatting  
under 15 U.S.C. § 1125(d)
- (2) Trademark Infringement  
under 15 U.S.C. § 1114
- (3) Unfair Competition  
under 15 U.S.C. § 1125(a)
- (4) Trademark Dilution  
under 15 U.S.C. § 1125(c)
- (5) State Trademark Infringement  
under N.R.S. § 600.420
- (6) State Trademark Dilution  
under N.R.S. § 600.435
- (7) Common Law Trademark Infringement
- (8) Deceptive Trade Practices  
under N.R.S. § 598.0903, et seq.
- (9) Intentional Interference with  
Prospective Economic Advantage

For its complaint, MGM MIRAGE Operations, Inc. alleges the following.

1 **NATURE OF THE CASE**

2 This is an action for cybersquatting, trademark infringement, unfair competition, and  
3 trademark dilution under federal statutes, with pendent state and/or common law claims for  
4 trademark infringement, trademark dilution, deceptive trade practices, and intentional interference  
5 with prospective economic advantage. Plaintiff seeks damages, attorneys' fees, costs, and  
6 preliminary and permanent injunctive relief.

7 **JURISDICTION AND VENUE**

8 1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.  
9 §§ 1331 and 1338(a). This Court has supplemental jurisdiction over Plaintiff's state and common  
10 law claims pursuant to 28 U.S.C. § 1367(a).

11 2. This Court has personal jurisdiction over Defendant based upon the following:  
12 (a) Defendant operates a website on the Internet that is accessible to residents of the State of  
13 Nevada; (b) Defendant's website is interactive in that it seeks to obtain information from web  
14 users; (c) Defendant's website is interactive in that it allows web users to gamble online; and  
15 (d) Defendant has committed tortious acts that Defendant knew or should have known would  
16 cause injury to a Nevada resident in the State of Nevada.

17 3. Venue is proper in the United States District Court for the District of Nevada under  
18 28 U.S.C. §§ 1391(b) and 1391(c). Venue lies in the unofficial Southern division of this Court.

19 **PARTIES**

20 4. Plaintiff MGM MIRAGE Operations, Inc. is a Nevada corporation with its  
21 principal place of business in Las Vegas, Nevada. Plaintiff has been authorized to protect and  
22 enforce the trademarks owned by New Castle Corp. (the "Trademark Owner").

23 5. Upon information and belief, Sylvain Dorais is an individual residing and doing  
24 business in Quebec, Canada.

25 **ALLEGATIONS COMMON TO ALL COUNTS**

26 6. "Excalibur" is a famous destination resort hotel casino located on the world-famous  
27 "Las Vegas Strip" in Las Vegas, Nevada.

1           7.       Since the property opened in 1990, the Trademark Owner has continuously used  
2 the EXCALIBUR trademarks in connection with advertising and promoting the property in the  
3 United States and around the world. The Trademark Owner has spent substantial sums of money  
4 to advertise and promote the EXCALIBUR trademarks in print, broadcast media, and on the  
5 Internet through the Excalibur web site accessible throughout the United States and around the  
6 world at <excaliburlasvegas.com> and <excalibur-casino.com>, among others. A true and  
7 accurate copy of the home page for the Excalibur website is attached hereto as Exhibit 1, and is  
8 incorporated by this reference. In addition, the Trademark Owner has made extensive use of the  
9 EXCALIBUR trademarks on, among other things, signage, wearing apparel, souvenirs and  
10 promotional materials.

11           8.       The EXCALIBUR name and logo are service marks that are owned by the  
12 Trademark Owner and registered on the Principal Register of the United States Patent and  
13 Trademark Office, including, among many others:

- 14                   a.       EXCALIBUR: Registration No. 1,659,163 for hotel services, and
- 15                   b.       EXCALIBUR: Registration No. 1,549,563 for casino services.

16           9.       These federal trademark registrations have not been abandoned, canceled, or  
17 revoked. Moreover, these federal registrations have become incontestable through the filing of  
18 Section 8 and 15 affidavits in the Patent and Trademark Office.

19           10.      Based on its federal trademark registrations and extensive use, the Trademark  
20 Owner owns the exclusive right to use the EXCALIBUR trademarks in connection with hotel,  
21 casino and related services.

22           11.      The EXCALIBUR trademarks have become distinctive and famous in the United  
23 States and around the world for resort hotel and casino services.

24           12.      On or about October 30, 2007, Defendant registered the <casino-excalibur.com>  
25 Internet domain name with Wild West Domains, Inc., a domain name registrar. The <casino-  
26 excalibur.com> domain name contains the EXCALIBUR Marks coupled with the word “casino,”  
27 which describes some of the very services offered by the Trademark Owner under its trademarks.

1           13.     Some time after registration, Defendant redirected the <casino-excalibur.com>  
2 domain name to an online gambling website entitled "Casino Excalibur." A true and accurate  
3 copy of the "Casino Excalibur" home page of the website is attached hereto as Exhibit 2, and is  
4 incorporated herein by this reference.

5           14.     Defendant has not registered and used the <casino-excalibur.com> domain name in  
6 good faith.

7           15.     By registering and using a domain name containing the EXCALIBUR Marks,  
8 Defendant was and is attempting to trade on the goodwill of the Trademark Owner.

9           16.     By registering and using a domain name containing the EXCALIBUR Marks, and  
10 by linking the same to an online gambling website, Defendant was and is attempting to create an  
11 association between the <casino-excalibur.com> domain and the Trademark Owner.

12           17.     By registering and using the <casino-excalibur.com> domain name, Defendant was  
13 and is attempting to frustrate or divert Internet traffic intended for the Trademark Owner.

14                               **COUNT I**  
15                               (Cybersquatting  
                                  Under The Lanham Act, 15 U.S.C. § 1125(d))

16           18.     Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth  
17 herein.

18           19.     Defendant has registered, trafficked in, and/or used a domain name that is  
19 confusingly similar to and/or dilutive of the EXCALIBUR Marks, which were distinctive and/or  
20 famous at the time Defendant registered the <casino-excalibur.com> domain name.

21           20.     Upon information and belief, Defendant has or has had a bad faith intent to profit  
22 from the EXCALIBUR Marks.

23           21.     As a direct and proximate result of such conduct, Plaintiff and the Trademark  
24 Owner have suffered, and will continue to suffer, monetary loss and irreparable injury to their  
25 business, reputation, and goodwill.  
26  
27

**COUNT II**

(Trademark Infringement  
Under The Lanham Act, 15 U.S.C. § 1114)

22. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

23. Defendant has used and/or is using in commerce the <casino-excalibur.com> domain name, which contains the EXCALIBUR Marks, and, thus, Defendant's domain name is confusingly similar to the Trademark Owner's trademarks.

24. Defendant's use in commerce of the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks in the <casino-excalibur.com> Internet domain name and Defendant's directing the same to an online gambling website, constitutes a reproduction, copying, counterfeiting, and colorable imitation of the Trademark Owner's trademarks in a manner that is likely to cause confusion or mistake or that is likely to deceive consumers.

25. By using the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks with the knowledge that the Trademark Owner owns and has used, and continues to use, its trademarks in Las Vegas, Nevada, across the United States, and around the world, Defendant has intended to cause confusion, cause mistake, or deceive consumers.

26. Defendant is using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in connection with the sale, offering for sale, or advertising of services in a manner that is likely to cause confusion or mistake, or to deceive consumers as to an affiliation, connection, or association with the Trademark Owner, or as to the origin, sponsorship, or approval of Defendant's services or commercial activities by Plaintiff and the Trademark Owner.

27. Defendant is also using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in the <casino-excalibur.com> domain name to cause initial interest confusion and to divert Internet users away from the Trademark Owner's website.

28. Defendant's use of the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks has created a likelihood of confusion among consumers who may falsely believe that Defendant's business or the online gambling website, to which the <casino-excalibur.com> domain name is redirected, is associated with the "Excalibur" resort hotel casino or that Plaintiff and the Trademark Owner sponsors or approves of Defendant's services or commercial activities.

29. As a direct and proximate result of Defendant's infringement, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

### **COUNT III**

(Unfair Competition

Under The Lanham Act, 15 U.S.C. § 1125(a))

30. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

31. Defendant's use in commerce of a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in connection with Defendant's <casino-excalibur.com> domain name constitutes a false designation of origin and/or a false or misleading description or representation of fact, which is likely to cause confusion, cause mistake, or deceive as to affiliation, connection, or association with the Trademark Owner, or as to the origin, sponsorship, or approval of Defendant's services or commercial activities by the Trademark Owner.

32. Defendant's use in commerce of the EXCALIBUR Marks and/or a mark confusingly similar thereto with the knowledge that the Trademark Owner owns and has used, and continues to use, its trademarks, constitutes intentional conduct by Defendant to make false designations of origin and false descriptions about Defendant's services and commercial activities.

33. As a direct and proximate result of such unfair competition, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

**COUNT IV**

(Trademark Dilution

Under The Federal Trademark Dilution Act, 15 U.S.C. § 1125(c))

34. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

35. The EXCALIBUR Marks are inherently distinctive. Through their adoption and consistent and extensive use, the EXCALIBUR Marks have acquired fame.

36. Defendant began using a mark that is the same and/or nearly identical to the EXCALIBUR Marks in connection with Defendant's <casino-excalibur.com> Internet domain name after the EXCALIBUR Marks became famous.

37. Defendant's use of the EXCALIBUR Marks and/or a mark confusingly similar thereto has and will cause dilution of the distinctive quality of the Trademark Owner's trademarks and will otherwise cause irreparable injury to its business, reputation, and goodwill.

38. Upon information and belief, Defendant's use of the EXCALIBUR Marks and/or a mark confusingly similar thereto was willful in nature, in that Defendant willfully intended to trade on the reputation of the Trademark Owner or to cause dilution of the EXCALIBUR Marks.

39. As a direct and proximate result of Defendant's dilution of the EXCALIBUR Marks, Plaintiff and the Trademark Owner have suffered, and will suffer, irreparable injury to their business, reputation, and goodwill.

**COUNT V**

(State Trademark Infringement

Under N.R.S. 600.420)

40. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

41. Defendant has used and/or is using the <casino-excalibur.com> domain name, which contains the EXCALIBUR Marks, without Plaintiff's or the Trademark Owner's consent.

42. Defendant's use in commerce of EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks in its <casino-excalibur.com> Internet domain name and redirecting the same to an online gambling website, constitutes a reproduction, copying,

1 counterfeit, and colorable imitation of the Trademark Owner's trademarks in a manner that is  
2 likely to cause confusion or mistake or that is likely to deceive consumers.

3 43. By using the EXCALIBUR Marks and/or a mark confusingly similar to the  
4 EXCALIBUR Marks with the knowledge that the Trademark Owner owns and has used, and  
5 continues to use, its trademarks in Las Vegas, Nevada, Defendant has intended to cause confusion,  
6 cause mistake, or deceive consumers.

7 44. Defendant is using a mark that is the same and/or confusingly similar to the  
8 EXCALIBUR Marks in connection with the sale, offering for sale, or advertising of services in a  
9 manner that is likely to cause confusion or mistake, or to deceive consumers as to an affiliation,  
10 connection, or association with the Trademark Owner, or as to the origin, sponsorship, or approval  
11 of Defendant's services or commercial activities by Plaintiff and the Trademark Owner.

12 45. Defendant is also using a mark that is the same and/or confusingly similar to the  
13 EXCALIBUR Marks in the <casino-excalibur.com> domain name to cause initial interest  
14 confusion and to divert Internet users away from the Trademark Owner's website.

15 46. Defendant's use of the EXCALIBUR Marks and/or a mark confusingly similar to  
16 the EXCALIBUR Marks has created a likelihood of confusion among consumers who may falsely  
17 believe that Defendant's business or the an online gambling website to which Defendant  
18 redirected the <casino-excalibur.com> domain name is associated with the "Excalibur" resort  
19 hotel casino or that Plaintiff and the Trademark Owner sponsor or approve of Defendant's services  
20 or commercial activities.

21 47. As a direct and proximate result of Defendant's infringement, Plaintiff and the  
22 Trademark Owner have suffered, and will continue to suffer, monetary loss and irreparable injury  
23 to their business, reputation, and goodwill.

24 **COUNT VI**

25 (State Trademark Dilution  
Under N.R.S. § 600.435)

26 48. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth  
27 herein.



51. Defendant's use of the EXCALIBUR Marks and/or marks confusingly similar thereto has and will cause dilution of the distinctive quality of the Trademark Owner's trademarks and will otherwise cause irreparable injury to the Trademark Owner's business, reputation, and goodwill.

53. As a direct and proximate result of Defendant's dilution of the EXCALIBUR Marks, Plaintiff and the Trademark Owner have suffered, and will suffer, irreparable injury to their business, reputation, and goodwill.

(Common Law Trademark Infringement)

55. By virtue of having used and continuing to use the EXCALIBUR Marks, the Trademark Owner has acquired common law trademark rights in the EXCALIBUR Marks.

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1 domain name originate from, or are affiliated with, or are endorsed by Plaintiff and the Trademark  
2 Owner, when, in fact, they are not.

3 57. As the direct and proximate result of Defendant's infringement of the Trademark  
4 Owner's common law trademark rights under Nevada and other common law, Plaintiff and the  
5 Trademark Owner have suffered, and will continue to suffer, monetary damages and irreparable  
6 injury to their business, reputation, and goodwill.

7 **COUNT VIII**  
8 (Deceptive Trade Practices  
Under N.R.S. § 598.0915)

9 58. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth  
10 herein.

11 59. Upon information and belief, in the course of conducting business, Defendant  
12 knowingly made false representations as to an affiliation, connection, and/or association with the  
13 Trademark Owner by using a mark identical and/or confusingly similar to the EXCALIBUR  
14 Marks, and otherwise engaged in deceptive trade practices.

15 60. As the direct and proximate result of Defendant's deceptive conduct, Plaintiff and  
16 the Trademark Owner have suffered, and will continue to suffer, monetary damages and  
17 irreparable injury to their business, reputation, and goodwill.

18 **COUNT IX**  
19 (Intentional Interference With  
Prospective Economic Advantage)

20 61. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth  
21 herein.

22 62. Upon information and belief, at the time Defendant adopted and began using a  
23 mark that is the same and/or confusingly similar to the EXCALIBUR Marks, and since that time,  
24 Defendant knew and has known that the Trademark Owner is in the business of providing resort  
25 hotel casino services, and that the Trademark Owner advertises those services on the Internet  
26 using the EXCALIBUR Marks.

63. Upon information and belief, Defendant committed acts intended or designed to disrupt the Trademark Owner's prospective economic advantage arising from providing those services.

64. Defendant's actions have disrupted or are intended to disrupt the Trademark Owner's business by, among other things, diverting web users away from the Trademark Owner's website and to the online gambling website Defendant redirected to the <casino-excalibur.com> domain name.

65. Defendant has no legal right, privilege or justification for this conduct.

66. As a direct and proximate result of Defendant's intentional interference with the Trademark Owner's prospective economic advantage, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary damages and irreparable injury.

67. Based on the intentional, willful and malicious nature of Defendant's actions, Plaintiff and the Trademark Owner are entitled to recover monetary damages, exemplary or punitive damages and reasonable attorneys' fees and costs incurred in connection with this action.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

A. A preliminary and permanent injunction prohibiting Defendant, Defendant's agents, servants, employees and/or all persons acting in concert or participation with Defendant, from: (1) using the EXCALIBUR Marks or confusingly similar variations thereof, alone or in combination with any other letters, words, letter strings, phrases or designs, in commerce or in connection with any business or for any purpose whatsoever (including, but not limited to, on websites, in domain names, in hidden text and metatags); and (2) registering or trafficking in any domain names containing the EXCALIBUR Marks or confusingly similar variations thereof, alone or in combination with any other letters, words, phrases or designs.

B. A preliminary and permanent injunction requiring the current domain name registrar to transfer the <casino-excalibur.com> domain name to Plaintiff;

1 C. An award of compensatory, consequential, statutory, exemplary, and/or punitive  
2 damages to Plaintiff in an amount to be determined at trial;

3 D. An award of interest, costs and attorneys' fees incurred by Plaintiff in prosecuting  
4 this action; and

5 E. All other relief to which Plaintiff is entitled.

6 DATED: November 5, 2008.

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**MGM Mirage Operations, Inc. v. Dorais**  
**EXHIBIT 1 TO COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

**MGM Mirage Operations, Inc. v. Dorais**  
**EXHIBIT 1 TO COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

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**MGM Mirage Operations, Inc. v. Dorais**  
**EXHIBIT 2 TO COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

**MGM Mirage Operations, Inc. v. Dorais**  
**EXHIBIT 2 TO COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**



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